

**COMMONWEALTH OF KENTUCKY  
KENTUCKY BOARD OF TAX APPEALS  
FILE NO. K05-S-56**

**WAYNE H WELLS**

**APPELLANT**

**V.**

**ORDER NO. K-19503**

**JEFFERSON COUNTY PROPERTY  
VALUATION ADMINISTRATOR**

**APPELLEE**

The Kentucky Board of Tax Appeals has delegated authority to the hearing officers pursuant to KRS 13B.030. The hearing officers entered a recommended order in compliance with the provisions of KRS 13B.110. No exceptions or objections to the recommended order were filed. The Board has reviewed the record and the recommended order.

The Kentucky Board of Tax Appeals conducted a hearing in this matter on December 14, 2005 in Louisville, Kentucky and makes the following findings of fact, conclusions of law and recommended disposition.

**FINDINGS OF FACT**

This assessment appeal is for real property located at 6814 Transylvania Ave., Louisville in Jefferson County. The Jefferson County Property Valuation Administrator assessed the property at \$372,870.00. The taxpayer or Appellant values the property at \$350,000.00. The Jefferson County Board of Assessment Appeals valued the property at \$372,870.00. The Appellants filed a timely appeal from the local board with the Kentucky Board of Tax Appeals.

The Appellant offered the following evidence in support of Appellant's appeal:

Mr. Wayne H. Wells (Appellant) represented himself. Mr. Wells notes his appeal is based on the assertion a proposed bridge (designed to extend Interstate 265 in northeastern Jefferson Kentucky over the Ohio River to a connecting interstate in Indiana) will “take every house” in his subdivision, but the Appellant’s property. Mr. Wells contends his property is the first piece of property next to the proposed extension of the interstate. Mr. Wells understands the interstate to be as many as nine (9) lanes wide, including six (6) lanes for traffic with high reaching lights.

Mr. Wells contents his 2005 property assessment did not appreciate or depreciate. Mr. Wells states his property will be the only property of the seven (7) homes in his subdivision not purchased by the state to provide a pathway for the proposed interstate to the bridge. Mr. Wells concludes his testimony noting the issues of the proposed interstate lights, noise, along with the dissolution of his neighborhood and possible zoning changes will “significantly impact” his property.

Mr. Larry Osterhage, representing the Jefferson County PVA office questioned the date of the historic Rosewell home sale to the Commonwealth of Kentucky via the Department of Highways authorized by the Transportation Department as a factor in the 2005 assessment. Mr. Wells confirmed the date of the sale of the Rosewell home as December 5, 2005.

Mr. John Worland, employed by the Jefferson County PVA testified he prepared an analysis of the subject property, 6814 Transylvania Avenue for the 2005 tax year. Mr. Worland states there were two comparables used with the subject property. Mr. Worland mentioned the first comparable to be 5917 Mason Boulevard. The second comparable was 7115 Windham Parkway. Mr. Worland tried to use a “style and type in age, similar to his (Mr. Wells) since

there weren't any in the direct neighborhood". Mr. Worland believed the Windham Parkway home to be in Hurstbourne.

Mr. Worland describes the subject property as being in a secluded area, close to the river on 3.05-acre lot. The first comparable of Mason Boulevard is very similar to Mr. Wells' Transylvania Property with a sale date of April 16, 2003, according to Mr. Worland. The Windham property was also described as being similar, but is located in a different neighborhood with a sale date of February 24, 2003. Mr. Worland explained he used a ProVal program for computer assisted mass appraisals computing the subject property at \$372,870.00. Mr. Worland notes the PVA "only had one good sale" for the assessment.

Mr. Worland contends the best solution for this assessment is to research a cost reproduction with some form of depreciation. Initially this would compute to \$441,862.00 but was reduced to \$372,870.00.00 to allow "a certain amount of leeway for the bridge and other factors". Additionally, Mr. Worland states the earlier assessment was \$383,000.00, but the proposed bridge does reflect "some influence being made to the neighborhood". Mr. Worland confirmed the subject property's assessment of \$347,150.00 for the year 2002 and the figure for the three (3) acres is assessed at \$80,950.00.

Mr. Worland felt there would have to be several sales before there could be a "determination of how the bridge is going to affect the nearby sales, market values of the properties". Mr. Wells asked Mr. Worland under cross-examination about his experience with the cost effect of a bridge and interstate through a neighborhood. Mr. Worland stated he does not have any of this kind of experience and his approach was "an educated guess". Mr. Worland did confirm under re-direct examination the amount does "account for depreciation as well as market factors".

In his summary, Mr. Wells states the uncertainty of the exact location and configurations of the proposed bridge and interstate affected his property value for three years. During this time, proposed paths of the interstate artery have changed directions.

Mr. Osterhage states in his summary the assessment was indicative of the conditions on January 1, 2005 without knowledge of any sales during 2005 and the “PVA has given him (Mr. Wells) the benefit of the doubt and gone down \$100,000.00, more than \$100,000.00 on the value of his property” and this figure is “fair and reflective of the conditions as evidenced” by the first comparable noted earlier.

Mr. Worland contends the proposed parkway approach at the US 42 Highway-I-265 intersection area located south of his property will provide an uphill grade causing trucks to shift gears in either direction causing an increase in noise. Mr. Worland corrected himself from an earlier statement stating the second comparable was located in the Sutherland neighborhood. Mr. Worland admits Mr. Wells is in “a unique situation” finding comparable properties regarding location, house square footage, date of construction and acreage.

Mr. Wells contends thick trees will buffer the Mason Boulevard comparable from the proposed bridge while the subject property will have a direct view of the proposed bridge. Mr. Osterhage notes these factors were “unknown in ’03 and January 1 of ’05”. Mr. Worland acknowledges the Windham Parkway comparable does not possess the same degree of bridge concerns as the subject property. The common factor with the three properties is its proximity to US 42 Highway.

It is the finding of this hearing that the Appellant did sustain his burden of proof regarding his challenge to the final order of the Jefferson County Board of Assessment Appeals.

Based upon the evidence in the record, it is the finding of the hearing officers, Ms.

Nancy Mitchell and Bill Beam, Jr. the fair cash value of the property in question as of January 1, 2005 is \$350,000.00.

### CONCLUSIONS OF LAW

The Kentucky Board of Tax Appeals is vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders and determinations of the Jefferson County Board of Assessment Appeals pursuant to KRS 131.340(1).

The function of the Board is not simply to review the action of the Jefferson County Board of Assessment Appeals, but to try anew the issues as presented. *Jefferson County Property Valuation Administrator v. Oxford Properties, Inc.*, Ky.App., 726 S.W.2d 317, 319 (1987). See KRS 131.340(1).

Section 172 of the Kentucky Constitution mandates that “all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring a fair voluntary sale.”

The choice of the most appropriate and reliable approach to valuation is within the prerogative of the Board. *Jefferson County Property Valuation Administrator*, 726 S.W.2d at 319.

Regardless of the manner or method used by the Property Valuation Administrator or the decision of the Kentucky Tax Board of Appeals, the finding of valuation must be at its fair cash value, estimated at the price it would bring at a fair voluntary sale. *Helman v. Kentucky Board of Tax Appeals*, Ky.App., 554 S.W.2d 889 (1977).

As the party proposing that the Kentucky Board of Tax Appeals set aside the decision of the Jefferson County Board of Assessment Appeals, the Appellants have the burden of

proving a lower value. KRS 13B.090(7).

If the property is sold at or near the assessment date in a fair and voluntary sale, the sale price is usually the best evidence of the property's fair cash value. *Sears, Roebuck & Company v. Boone County Board of Assessment Appeals*, Ky.App., 715 S.W.2d 888, 889 (1986).

Based upon the facts as established in this hearing, the hearing officers conclude that the fair cash value of the subject property located at 6814 Transylvania Avenue is \$350,000.00 as of January 1, 2005.

### **RECOMMENDED ORDER**

It is recommended that the July 26, 2005 final ruling of the Jefferson County Board of Assessment Appeals be overturned and the real property be assessed at a fair cash value of \$350,000.00 as of January 1, 2005.

Each party shall have fifteen (15) days from the date any recommended order is mailed within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order may be sent by regular mail to the last known address of the party.

### **FINAL ORDER**

The Kentucky Board of Tax Appeals has considered the record and accepts the recommended order of the hearing officers, and adopts it as the Board's final order. Failure to file exceptions to an administrative hearing officer's recommendations after a hearing constitutes a failure to exhaust administrative remedies and precludes appellate review.

*Swatzell v. Natural Resources and Environmental Protection Cabinet*, Ky App 962 SW 2d 866 (1998).

The July 26, 2005 final ruling of the Jefferson County Board of Assessment Appeals is reversed and the real property is to be assessed at a fair cash value of \$350,000.00 as of January 1, 2005.

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

ORDER NO. K-19503

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER**  
**AND MAILING: April 27, 2006**

**KENTUCKY BOARD OF TAX APPEALS**  
**FULL BOARD CONCURRING**

**NANCY MITCHELL**  
**CHAIR**

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